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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,535	02/05/2004	Eizo Kanatani	248483US0	2817
22850	7590	08/04/2006	EXAMINER	
C. IRVIN MCCLELLAND OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			STITZEL, DAVID PAUL	
		ART UNIT	PAPER NUMBER	1616

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/771,535	KANATANI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	David P. Stitzel, Esq.	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 May 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 and 8-10 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,6,7 and 11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/31/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## OFFICIAL ACTION

### *Acknowledgment of Receipt*

Receipt of the Applicants' Election, with traverse, of: Invention I, encompassing claims 1-7 and 11; and an inorganic salt as the patentably distinct species of component B, as claimed in claims 1, 2 and 11; which was filed on May 19, 2006, in response to the Official Action mailed on April 19, 2006, is acknowledged.

Applicant's traversal of the aforementioned restriction requirement on the grounds that said restriction requirement is improper and that a prior art search and examination of the claims of the inventions as set forth in Inventions I through IV would not impose a serious search burden, is duly noted. However, a proper *prima facie* case of undue search burden associated with a prior art search and examination of the claims of the separate, distinct and independent inventions of Groups I through IV has previously been established in the aforementioned Official Action. As a result, the restriction requirement is deemed proper and therefore made FINAL.

### *Status of Claims*

Claims 3-5 and 8-10 are withdrawn from further consideration as being directed to a non-elected invention. As a result, claims 1, 2, 6, 7 and 11 are currently pending and therefore examined herein on the merits for patentability.

### *Claim Rejections - 35 U.S.C. § 102*

The following is a quotation of the appropriate paragraph of 35 U.S.C. § 102, which forms the basis of the anticipation rejections as set forth under this particular section of the Official Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 7 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Patent Application Publication JP2001187775A (hereinafter the Lion '775 publication) as evidenced by The Merck Index, 10<sup>th</sup> Edition, p. 1100, 1232 and 1233 [Potassium Chloride Monograph No. 7495; Sodium Chloride Monograph No. 8430] (1983) (hereinafter the Merck Index publication).

With respect to claims 1, 2, 6, 7 and 11 of the instant application, the Lion '775 publication discloses a composition comprising: (4-(dodecanamido)butenyl)guanidine, or a salt thereof; and an electrolyte for stabilizing said (4-(dodecanamido)butenyl)guanidine, or salt thereof, in an aqueous solution (abstract).

Although only one reference should normally be used in making a rejection under 35 U.S.C. § 102, such a rejection made utilizing multiple secondary references has been held to be proper when the extra references are merely cited to show that a characteristic not explicitly disclosed in the primary reference is inherent therein. See MPEP § 2131.01 Multiple Reference 35 U.S.C. § 102 Rejections.

Although the Lion '775 publication discloses utilizing an electrolyte for stabilizing said (4-(dodecanamido)butenyl)guanidine, or salt thereof, in an aqueous solution (abstract), the Lion '775 publication does not explicitly disclose utilizing sodium chloride or potassium chloride as said electrolyte. However, it was very well known in the art at the time the instant application was filed that sodium chloride and potassium chloride are electrolytes, as evidenced by the Merck Index publication, which discloses that sodium chloride and potassium chloride are efficacious electrolyte replenishers (Potassium Chloride Monograph No. 7495; Sodium Chloride Monograph No. 8430). Therefore, although the Lion '775 publication does not explicitly disclose utilizing sodium chloride or potassium chloride as said electrolyte, doing so is not necessary, as one of ordinary skill in the art at the time the instant application was filed would immediately recognize sodium chloride and potassium chloride as electrolytes, as evidenced by the Merck Index publication.

***Conclusion***

Claims 1, 2, 6, 7 and 11 are rejected because the claimed invention is anticipated since each and every element of the claimed invention, as a whole, is disclosed in the cited prior art references.

***Remarks***

The following is a list of prior art patents and publications made of record and considered pertinent to the Applicants' disclosure, but are not however currently relied upon in construing the claim rejections as set forth herein:

- U.S. Patent 4,975,275; and
- Japanese Patent Application Publication JP06330090A (hereinafter the Lion '090 publication).

***Contact Information***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David P. Stitzel, M.S., Esq., whose telephone number is 571-272-8508. The Examiner can normally be reached on Monday-Friday, from 7:30AM-6:00PM.

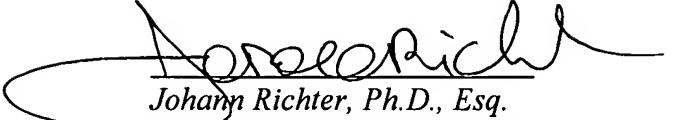
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Johann Richter, Ph.D., Esq., can be reached at 571-272-0646. The central fax number for the USPTO is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published patent applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished patent applications is only available through Private PAIR. For more information about the PAIR system, please see <http://pair-direct.uspto.gov>. Should you have questions about acquiring access to the Private PAIR system, please contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 1616

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Examiner: David P. Stitzel, Esq.

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May 2, 2006*



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